IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 3909 of 2006()

CRIME NO.320/98 OF THE ADOOR POLICE STATION.

PETITIONER: ACCUSED

ASHOKAN, AGED 36 YEARS,
D/O.CHELLAPPAN, MULLASSERY HOUSE,
EZHAMKULAM VILLAGE, ADOOR TALUK,
PATHANAMTHITTA.

BY ADV. SRI.K.MADHUSOODHANAN NAIR

RESPONDENTS:

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1. STATE OF KERALA,
BY CIRCLE INSPECTOR OF POLICE,
ADOOR, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. DEPUTY SUPERINTENDENT OF POLICE,
C.B.C.I.D., KOTTAYAM, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY P.P. SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.3909 OF 2006

Dated this the 29th day of November, 2006

ORDER

The petitioner is now shown as an accused – accused No.24 in Crime No.320/98 of the Adoor Police Station. The said prosecution is, inter alia, under Sec.307 read with Sec.149 of the IPC. The petitioner is not shown as an accused in the F.I.R. The local police had conducted the investigation. He was not arrayed as an accused in the final report. Subsequently, further investigation has been conducted by the Crime Branch C.I.D. and a further report has been filed in which the petitioner is arrayed as an accused. On the further report, committal proceedings against the petitioner has been registered before the learned Judicial Magistrate of the First Class, Adoor. The petitioner, counsel submits, has, in these circumstances, received notice to appear in the committal proceedings. The petitioner has, at this stage, come to this Court with a prayer to invoke the powers under Sec.482 of the Cr.P.C. to quash the further report submitted under Sec.173 (8) of the Cr.P.C. and the committal proceedings initiated by

the learned Magistrate on the basis of such further report.

2. What is the reason? The learned counsel for the petitioner submits that arraying the petitioner as an accused is most unjustified and unsustainable. It amounts to abuse of the process of the court. Further material collected in further investigation under Sec.173(8) of the Cr.P.C. cannot be reckoned as acceptable material at all.

3. I am of opinion that, at this stage, it is not possible or necessary for the court to scan the entire materials placed before the learned Magistrate against the petitioner in the further report. The petitioner will certainly get an opportunity to claim discharge before the Court of Sessions if he is committed by the learned Magistrate. The petitioner must avail of that opportunity and claim discharge before the learned Sessions Judge.

4. Needless to say that the learned Sessions Judge has to consider the plea of the petitioner for discharge at the stage of Sec.227/228 of the Cr.P.C. Such plea shall have to be considered, in accordance with law, by the learned Sessions Judge.

5. The Code of Criminal Procedure provides procedure which would enable an accused to claim premature termination of the criminal proceedings against him. Normally and ordinarily that procedure has to be adopted by the indictee to claim such premature termination of the proceedings. That consideration is what the learned Sessions Judge must undertake at the stage of Sec.227/228 of the Cr.P.C. I am not persuaded to agree that any such compelling circumstances exist in this case which would justify this Court performing that onerous responsibility which the Sessions Judge is expected to perform under Sec.227/228 of the Cr.P.C. In an exceptional case, the availability of such right for the petitioner to claim discharge under Sec.227 of the Cr.P.C. cannot and need not stand in the way of this Court invoking the powers under Sec.482 of the Cr.P.C. But, that cannot be the daily routine. It cannot be the ordinary course. No exceptional reasons are shown to exist and I am satisfied that, in the facts and circumstances of this case, the petitioner has to be relegated to claim his relief from the Sessions Judge under Sec.227/228 of the Cr.P.C. Needless to say that if the petitioner is aggrieved by such decision taken by the

learned Sessions Judge, his option to challenge that decision will not, in any way, be fettered by the dismissal of this Crl.M.C.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge